
State Government & Tribal Affairs
Committee

HB 1293

Brief Description: Modifying whistleblower protection provisions.

Sponsors: Representatives Liias, Hunt, Armstrong, Miloscia, Nelson, Morrell and Orwall.

Brief Summary of Bill

- Modifies the state Whistleblower Protection Act.

Hearing Date: 1/22/09

Staff: Tracey O'Brien (786-7196)

Background:

The state whistleblower protection program was established to encourage state employees to disclose improper governmental action and to provide protection to employees who report improper action.

In 2008 the Legislature updated and expanded the whistleblower protections. The changes included expanding the definitions of “improper governmental action” and “reprisal or retaliatory action”. The new law also added definitions for “gross mismanagement” and “public official”.

A “whistleblower” is defined as an employee: who in good faith reports alleged improper governmental action to the State Auditor (Auditor) or other public official initiating an investigation by the Auditor; or an employee who is perceived by the employer as reporting, whether he or she did or not, alleged improper governmental action to the Auditor or other public official, initiating an investigation by the Auditor.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Any person who is a whistleblower and who has been subjected to workplace reprisal or retaliatory action is presumed to have established a cause of action. An agency may rebut the presumption that it has taken retaliatory action by a showing, by the preponderance of the evidence, that there have been a series of documented personnel problems or a single, egregious event. An agency may also demonstrate that the action or actions were justified by reasons unrelated to the whistleblowing by showing that improper motive was not a substantial factor.

Summary of Bill:

The codified policy statement of the State Employee Whistleblower Protection Act is expanded to recognize that employees may have to disclose improper governmental actions in order to fulfill legal and/or professional obligations.

Abuse of authority is added to “improper government action”, thus expanding the circumstances under which state whistleblower protections may apply. “Abuse of authority” means an arbitrary or capricious exercise of, or willful failure to exercise, power that adversely affects the rights of any person or that results in personal gain or advantage to himself, herself, or other persons.

A public employee shall not be prohibited or otherwise restricted in providing information or expressing opinions to state or local elected officials, or to courts or law enforcement on matters of public concern. An employee shall not be subject to acts of retaliation because the employee expressed such opinions. “Matters of public concern” is defined as matters of interest to the community as a whole, whether for social, political, or other reasons, and must include discussions that disclose any evidence of corruption, impropriety, or other malfeasance on the part of government officials, violations of law, or incidences of fraud, abuse or gross mismanagement.

The uncodified intent section from last year’s session law is amended to remove references to encouraging employees to disclose, including rules that warrant review and that the law should be broadly construed in order to effectuate the purpose of this act.

An agency may rebut the presumption that it has taken retaliatory action by a showing, by the preponderance of the evidence, that there have been a series of documented personnel problems or a single egregious event justifying the agency’s action or actions by reasons unrelated to the employee’s status as a whistleblower by showing that improper motive was not a material factor.

This act includes a state severability clause.

Appropriation: None.

Fiscal Note: Requested on January 19, 2006.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.